

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WILLIE JAMES COLBERT, JR.,

Plaintiff,

v.

Case No: 2:20-cv-215-SPC-NPM

UNITED STATES OF AMERICA,

Defendant.

_____ /

OPINION AND ORDER¹

Petitioner Willie James Colbert, Jr. filed a Motion for Clarification in his underlying criminal case at case no. 2:94-cr-108-FtM-38-NPM ([Doc. 378](#), Motion). Colbert sought relief from his sentence and underlying conviction based upon the United States Supreme Court's decision in [Rehaif v. United States](#), 585 U.S. ----, 139 S.Ct. 2191, 204 L.Ed. 594 (2010). (*Id.*) The Court liberally construed the Motion as a Motion to Vacate Under 28 U.S.C. § 2255 and opened the above case. ([Doc. 1](#)).

The Court's records reveal Colbert has already filed a 28 U.S.C. § 2255 petition attacking this same conviction. See Case No. 2:94-cr-108-SPC-NPM ([Doc. 242](#)); Case No. 2:98-cv-266-FTM-24D ([Doc. 1](#)). On September 30, 2001, the Court denied Colbert relief under his previous § 2255 petition. See Case No. 2:94-cr-108-SPC-NPM ([Doc. 291](#)); Case No. 2:98-cv-266-FTM-24D ([Doc. 8](#)).

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

Colbert has not indicated he has obtained leave from the Eleventh Circuit Court of Appeals to file a successive petition. See [28 U.S.C. § 2244\(b\)](#); Rules Governing Section 2254 Cases in The United States District Courts, R. 9. “Without authorization, the district court lacks jurisdiction to consider a second or successive petition.” *Pavon v. Attorney Gen. Fla.*, 719 Fed. Appx. 978, 979 (11th Cir. 2018) (citing *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003)). The Court recognizes that the term “second or successive” is not self-defining and not all habeas applications filed after the first filed habeas are per se successive. *Panetti v. Quarterman*, 551 U.S. 930, 943-44, (2007); *Stewart v. United States*, 646 F.3d 856, 860 (11th Cir. 2011). Having reviewed the construed petition, the Court finds Colbert has not asserted any facts or claims that would fall within the “small subset of unavailable claims that must not be categorized as successive.” *Stewart* at 863.

Consequently, this case will be dismissed without prejudice to allow Colbert the opportunity to seek authorization from the Eleventh Circuit Court of Appeals should he wish to file a second motion to challenge to his current conviction and sentence under [28 U.S.C. § 2255\(h\)](#). Colbert should be aware that § 2244(b)(2) limits the circumstances under which the Court of Appeals will authorize the filing of a second or successive habeas corpus petition. Furthermore, § 2244(d) imposes a time limitation on the filing of a habeas corpus petition. In seeking relief in the Court of Appeals, Colbert should be cognizant of both these provisions.

Accordingly, it is now

ORDERED:

1. Petitioner's construed Motion to Vacate Under [28 U.S.C. § 2255](#) ([Doc. 1](#)) is **DISMISSED**.

2. The Clerk of Court shall: (a) file a copy of this Order in Petitioner's underlying criminal case at 2:94-cr-108-FtM-39NPM; (b) moot any pending motions in this and Petitioner's underlying criminal case; (c) enter judgment; and (d) provide Petitioner with an "Application for Leave to File a Second or Successive Habeas Corpus Petition [28 U.S.C. § 2244\(b\)](#) by a Prisoner in State Custody" form with this Order.

DONE and **ORDERED** in Fort Myers, Florida this 3rd day of April 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record